

and product classification system to be used in recordkeeping and swap data reporting pursuant to this part, by means of a Commission order that is published in the FEDERAL REGISTER and on the Web site of the Commission, as soon as practicable after such determination is made. The order shall include notice of this designation, the contact information of the issuer of such unique product identifiers, and information concerning the procedure and requirements for obtaining unique product identifiers and using the product classification system.

(c) *Use of the unique product identifier and product classification system by registered entities and swap counterparties.*

(1) When a unique product identifier and product classification system has been designated by the Commission pursuant to paragraph (b) of this section, each registered entity and swap counterparty shall use the unique product identifier and product classification system in all recordkeeping and swap data reporting pursuant to this part.

(2) Before a unique product identifier and product classification system has been designated by the Commission, each registered entity and swap counterparty shall use the internal product identifier or product description used by the swap data repository to which a swap is reported in all recordkeeping and swap data reporting pursuant to this part.

§ 45.8 Determination of which counterparty must report.

The determination of which counterparty is the reporting counterparty for a swap shall be made as provided in this section.

(a) If only one counterparty is a swap dealer, the swap dealer shall be the reporting counterparty.

(b) If neither counterparty is a swap dealer, and only one counterparty is a major swap participant, the major swap participant shall be the reporting counterparty.

(c) If both counterparties are non-SD/MSP counterparties, and only one counterparty is a financial entity as defined in CEA section 2(h)(7)(C), the counterparty that is a financial entity shall be the reporting counterparty.

(d) If both counterparties are swap dealers, or both counterparties are major swap participants, or both counterparties are non-SD/MSP counterparties that are financial entities as defined in CEA section 2(h)(7)(C), or both counterparties are non-SD/MSP counterparties and neither counterparty is a financial entity as defined in CEA section 2(h)(7)(C):

(1) For a swap executed on or pursuant to the rules of a swap execution facility or designated contract market, the counterparties shall agree which counterparty shall be the reporting counterparty. The counterparties shall make this agreement after the swap execution facility or designated contract market notifies the counterparties, as provided in paragraph (h)(2) of this section, that paragraph (d) of this section applies to them, and not later than the end of the first business day following the date of execution of the swap. After this agreement is reached, the reporting counterparty shall report to the swap data repository that it is the reporting counterparty.

(2) For an off-facility swap, the counterparties shall agree as one term of their swap which counterparty shall be the reporting counterparty.

(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, if both counterparties to a swap are non-SD/MSP counterparties and only one counterparty is a U.S. person, that counterparty shall be the reporting counterparty.

(f) Notwithstanding the provisions of paragraphs (a) through (e) of this section, if neither counterparty to a swap is a U.S. person, but the swap is executed on a swap execution facility or designated contract market or otherwise executed in the United States, or is cleared by a derivatives clearing organization:

(1) For such a swap executed on or pursuant to the rules of a swap execution facility or designated contract market, the counterparties shall agree which counterparty shall be the reporting counterparty. The counterparties shall make this agreement after the swap execution facility or designated contract market notifies the counterparties, as provided in paragraph (h)(2) of this section, that neither

counterparty is a U.S. person, and not later than the end of the first business day following the date of execution of the swap. After this agreement is reached, the reporting counterparty shall report to the swap data repository that it is the reporting counterparty.

(2) For an off-facility swap, the counterparties shall agree as one term of their swap which counterparty shall be the reporting counterparty.

(g) If a reporting counterparty selected pursuant to paragraphs (a) through (f) of this section ceases to be a counterparty to a swap due to an assignment or novation, the reporting counterparty for reporting of required swap continuation data following the assignment or novation shall be selected from the two current counterparties as provided in paragraphs (g)(1) through (4) of this section.

(1) If only one counterparty is a swap dealer, the swap dealer shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.

(2) If neither counterparty is a swap dealer, and only one counterparty is a major swap participant, the major swap participant shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.

(3) If both counterparties are non-SD/MSP counterparties, and only one counterparty is a U.S. person, that counterparty shall be the reporting counterparty and shall fulfill all counterparty reporting obligations.

(4) In all other cases, the counterparty that replaced the previous reporting counterparty by reason of the assignment or novation shall be the reporting counterparty, unless otherwise agreed by the counterparties.

(h) For all swaps executed on or pursuant to the rules of a swap execution facility or designated contract market, the rules of the swap execution facility or designated contract market must require each swap counterparty to provide sufficient information to the swap execution facility or designated contract market to enable the swap execution facility or designated contract market to report all swap creation data as provided in this part.

(1) To achieve this, the rules of the swap execution facility or designated

contract market must require each market participant placing an order with respect to any swap traded on the swap execution facility or designated contract market to include in the order, without limitation:

(i) The legal entity identifier of the market participant placing the order, if available.

(ii) A yes/no indication of whether the market participant is a swap dealer with respect to the product with respect to which the order is placed.

(iii) A yes/no indication of whether the market participant is a major swap participant with respect to the product with respect to which the order is placed.

(iv) A yes/no indication of whether the market participant is a financial entity as defined in CEA section (2)(h)(7)(C).

(v) A yes/no indication of whether the market participant is a U.S. person.

(vi) If applicable, an indication that the market participant will elect the clearing requirement exception in CEA section (2)(h)(7) for any swap resulting from the order.

(vii) If the swap will be allocated:

(A) An indication that the swap will be allocated.

(B) The legal entity identifier of the agent.

(C) An indication of whether the swap is a post-allocation swap.

(D) If the swap is a post-allocation swap, the unique swap identifier of the original transaction between the reporting counterparty and the agent.

(2) To achieve this, the swap execution facility or designated contract market must use the information obtained pursuant to paragraph (h)(1) of this section to identify the counterparty that is the reporting counterparty pursuant to the CEA and this section, wherever possible. If the swap execution facility or designated contract market cannot identify the reporting counterparty from the information available to it as specified in paragraph (h) of this section, the swap execution facility or designated contract market shall:

(i) Notify each counterparty, as soon as technologically practicable after execution of the swap, that it cannot identify whether that counterparty is

the reporting counterparty, and, if applicable, that neither counterparty is a U.S. person; and

(ii) Transmit to each counterparty the LEI (or substitute identifier as provided in this section) of the other counterparty.

§ 45.9 Third-party facilitation of data reporting.

Registered entities and swap counterparties required by this part to report required swap creation data or required swap continuation data, while remaining fully responsible for reporting as required by this part, may contract with third-party service providers to facilitate reporting.

§ 45.10 Reporting to a single swap data repository.

All swap data for a given swap must be reported to a single swap data repository, which shall be the swap data repository to which the first report of required swap creation data is made pursuant to this part.

(a) *Swaps executed on a swap execution facility or designated contract market.* To ensure that all swap data for a swap executed on or pursuant to the rules of a swap execution facility or designated contract market is reported to a single swap data repository:

(1) The swap execution facility or designated contract market that reports required swap creation data as required by § 45.3 shall report all such data to a single swap data repository. As soon as technologically practicable after execution, the swap execution facility or designated contract market shall transmit to both counterparties to the swap, and to the derivatives clearing organization, if any, that will clear the swap, both:

(i) The identity of the swap data repository to which required swap creation data is reported by the swap execution facility or designated contract market; and

(ii) The unique swap identifier for the swap, created pursuant to § 45.5.

(2) Thereafter, all required swap creation data and all required swap continuation data reported for the swap reported by any registered entity or counterparty shall be reported to that same swap data repository (or to its

successor in the event that it ceases to operate, as provided in part 49 of this chapter).

(b) *Off-facility swaps with a swap dealer or major swap participant reporting counterparty.* To ensure that all swap data for such swaps is reported to a single swap data repository:

(1) If the reporting counterparty reports primary economic terms data to a swap data repository as required by § 45.3:

(i) The reporting counterparty shall report primary economic terms data to a single swap data repository.

(ii) As soon as technologically practicable after execution, but no later than as required pursuant to § 45.3, the reporting counterparty shall transmit to the other counterparty to the swap both the identity of the swap data repository to which primary economic terms data is reported by the reporting counterparty, and the unique swap identifier for the swap created pursuant to § 45.5.

(iii) If the swap will be cleared, the reporting counterparty shall transmit to the derivatives clearing organization at the time the swap is submitted for clearing both the identity of the swap data repository to which primary economic terms data is reported by the reporting counterparty, and the unique swap identifier for the swap created pursuant to § 45.5.

(2) If the reporting counterparty is excused from reporting primary economic terms data as provided in § 45.3(b) or (c):

(i) Paragraph (b)(1) of this section shall not apply.

(ii) At the time the swap is submitted for clearing, the reporting counterparty shall transmit to the derivatives clearing organization the unique swap identifier for the swap created pursuant to § 45.5, and notify the derivatives clearing organization that the reporting counterparty has not reported any required swap creation data for the swap to a swap data repository.

(iii) The derivatives clearing organization shall report all required swap creation data for the swap to a single swap data repository. As soon as technologically practicable after clearing, the derivatives clearing organization shall transmit to both counterparties